THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANANATHAN

WRIT PETITION NOS. 17548, 17628, 17051, 17076, 18666, 21236, 19459, 16771 AND 23362 OF 2006

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Repeated attempts by the Government of Andhra Pradesh to bring about a unified cadre of teachers in government, mandal parishad and zilla parishad schools have met with little success. The last such effort, prior to Act 27 of 2005, which met its waterloo was when the Rules, in G.O.Ms.No.538 dated 20.11.1998, were declared ultravires the Presidential Order and were quashed by the Division Bench of this Court in **M. Kesavulu Vs. State of A.P.**[1]. Aggrieved by the order of the Division Bench in **M. Kesavulu**[1], the A.P. United Teachers Federation filed S.L.P.Nos.7496-7510 of 2005 and the Supreme Court, by order dated 25.10.2004, stayed the contempt proceedings initiated pursuant to the order of the Division Bench. The State of A.P. also preferred S.L.P.Nos.22597-22612 of 2004 and, while granting stay of the contempt proceedings, these S.L.Ps. were directed to be tagged along with S.L.P.Nos.7496-7510 of 2004. All the S.L.Ps. are still pending before the Supreme Court.

As the order of the Division Bench, in **M. Kesavulu**[1], was not suspended by the Supreme Court, the State Government then commenced efforts to obtain approval of the President for organizing the cadre of teachers in mandal parishad and zilla parishad schools into local cadres, in yet another attempt at achieving integration of the two cadres, i.e., the teachers cadre in government schools and the teachers cadre in mandal parishad and zilla parishad schools. The

Central Government, vide letter dated 7.3.2005, sought information from the Government of A.P. whether (i) organization of teaching and non-teaching staff of zilla parishad and mandal parishad schools in Andhra Pradesh into local cadres would cause disquiet among the teaching and non-teaching staff; and (ii) whether it was legally tenable and procedurally appropriate to issue the proposed orders when the principle behind the proposed orders had been challenged in the S.L.Ps filed by the A.P. United Teachers Federation before the Supreme Court, notwithstanding the fact that the Union of India was not a respondent in the S.L.Ps. While furnishing information to the Central Government, in its letter dated 18.03.2005, the Government of A.P. informed them that if the President of India permitted teachers working in Panchayat Raj institutions to be organized into local cadres, and they were integrated with government teachers, the S.L.Ps. pending before the Supreme Court would become infructuous and, therefore, there was no legal objection to issuing the proposed orders. Concurrence of the Government of India was sought to enable the State Government to organize the teaching and non-teaching staff of zilla parishad and mandal parishad schools into local cadres. However, Presidential approval has not been accorded till date.

The legislative route was then taken and Ordinance 12 of 2005 was promulgated on 13.7.2005 and under Section 12(1) thereunder the Rules notified in G.O.Ms. No. 95 and 96 dated 25.7.2005 were made. Ordinance 12 of 2005 was challenged before the A.P.A.T in O.A. 3109 of 2005 and batch and, on Act 27 of 2005 being made, repealing Ordinance 12 of 2005, necessary amendments were carried thereto and several other O.As. were filed to include a challenge to the vires of the Act. While several contentions were raised challenging the validity of Act 27 of 2005, and the Rules notified in G.O.Ms.Nos.95 and

96 dated 12.7.2005, the Tribunal, by order dated 14.8.2006, allowed O.A. No. 3109 of 2005 and batch and quashed Section 1(3) of Act 27 of 2005 as ultravires the Presidential Order. The Tribunal further held that Act 27 of 2005 could not be brought into force without approval of the President as stipulated under the proviso to Para 3(1) of the Presidential Order and, since the Act could not have been brought into force, the Rules issued under G.O.Ms.No.95 and 96 dated 25.7.2005 were also unenforceable.

The order of the Tribunal, in O.A.Nos.3903 of 2005 and batch dated 14.8.2006, is subjected to challenge before us by the Government of A.P. in W.P.17548 of 2006, the State Teachers Union in W.P.17628 of 2006, and others in W.P.Nos.16771, 17051, 17076, 18666, 19459, 21326 and 23362 of 2006. Since the order of the Tribunal, to the extent it negatived the challenge to the vires of Act 27 of 2005, and the Rules in G.O.Ms. No. 95 and 96 dated 25.07.2005, is also under challenge in some of these writ petitions, we are called upon to examine the vires of the Act and the Rules on various grounds and not just on the ground which found favour with the Tribunal.

While Sri E. Manohar, Sri S. Ramachandra Rao, learned Senior Counsel, Sri M. Surendra Rao and Sri J.R. Manohar Rao, learned Counsel have made elaborate submissions challenging the validity of Act 27 of 2005, and the Rules notified in G.O.Ms. No. 95 and 96 dated 25.07.2005, the learned Advocate General and Sri D. Prakash Reddy, learned Senior Counsel, have advanced elaborate arguments to uphold the validity of the Act and the Rules. Detailed written submissions have also been placed before us by the learned Advocate General, Sri S. Ramachandra Rao, learned Senior Counsel and Sri M. Surendra Rao.

We are satisfied that Act 27 of 2005 and the Rules notified in

G.O.Ms.No.95 and 96 dated 25.7.2005 are ultra vires the Presidential Order, and Article 16(2) of the Constitution of India, and are required to be struck down. It is, therefore, unnecessary for us to refer to the other submissions made challenging the validity of Act 27 of 2005 and the Rules. Before referring to the provisions of the Act 27 of 2005, and the Rules notified in G.O.Ms. No. 95 and 96 dated 25.07. 2005, it is necessary to make, in brief, prefatory observations on the scope and purport of Article 371-D and the Presidential Order made thereunder.

ARTICLE 371-D – CIRCUMSTANCES WHICH NECESSITATED ITS INTRODUCTION:

State action be it by legislation, plenary or subordinate, or by an executive order, which denies citizens equal opportunity and access to public employment on the ground only of place of birth or residence, would be invalid qua the provisions of Article 16(2) of the Constitution of India. Article 16(3) of the Constitution, which makes an exception to the limitations under Article 16(2), is confined to enabling Parliament to prescribe the qualification of residence in the State as a whole, and not to any part thereof. No legislation is permissible even by Parliament making the requirement of 'residence' in a part of the State for employment or appointment to a public office in that State. (**A.V.S. Narasimha Rao Vs. State of A.P.**[2], **Ch. Raji Reddy Vs. A.P.S.R.T.C. rep. by its Regional Manager, Bhagyanagar Region**[3]).

It is with a view to enable prescription of "residence" in a part of the State for employment or appointment to posts, and in matters of

admissions in Universities or other educational institutions, that the Constitution, under Article 371-D, has made special provisions with respect to the State of Andhra Pradesh. It is necessary, in this context, to refer in brief to the events which led to the introduction of Article 371-D by the 32nd amendment to the Constitution.

The former State of Hyderabad comprised of three linguistic areas: Telengana, Marathwada and Karnatak. In 1919, the Nizam issued a Firman promulgating the *Mulki Rules*. The Nizam confirmed these Rules by another Firman issued in 1949. Those Rules provided, *inter alia*, 15 years residence in the State as an essential qualification for public employment. In 1955 the Rajpramukh, in exercise of his powers under the proviso to Article 309 of the Constitution, framed the Hyderabad General Recruitment Rules, 1955 in supersession of all previous rules on the subject. These rules prescribed a domicile certificate for appointment to a state or subordinate service, and the issue of such certificate depended upon residence in the State for a period of not less than 15 years.

On November 1, 1956, on the States Reorganisation Act coming into force, the State of Hyderabad was trifurcated. The Telengana region became a part of the newly formed State of Andhra Pradesh, while Marathwada and Karnatak regions ultimately became parts of Maharashtra and Mysore (presently Karnataka) States. The State of Andhra Pradesh was constituted of portions of the territories drawn from the erstwhile States of Andhra and Hyderabad.

Soon after formation of the State of Andhra Pradesh, Parliament enacted the Public Employment (Requirement as to Residence) Act, 1957 making special provision for requirement as to residence for

public employment and brought it into force with effect from March 21, 1957. The constitutional validity of this Act was challenged by persons employed in the ministerial services of the Govt. of Andhra Pradesh in **A.V.S. Narasimha Rao**[2]and the Supreme Court held Section 3 of the Act, insofar as it related to the Telangana area, ultra vires Article 16 of the Constitution.

Meanwhile, there were two widespread agitations, one in the Telangana area and the other in the Andhra region of the State between 1969 and 1972, creating political turmoil and virtually paralysing State administration. The political leaders of the State, considerably exercised over this situation, made concerted efforts to find an enduring solution to this problem. On September 21, 1973 a Six-Point Formula was evolved by the political leaders to provide for a uniform approach for promoting accelerated development of the backward areas of the State so as to secure balanced development of the State as a whole and to provide equitable opportunities to different areas of the State in matters of education and employment in public services. Point No.3, 4 and 5 thereof read as under:-

(3). Subject to the requirements of the State as a whole, local candidates should be given preference to specified extent in the matter of direct recruitment to (i) non-gazeted posts (other than in the Secretariat. Offices of Heads of Department, other State level officers and institutions and the Hyderabad City Police) (ii) corresponding posts under the local bodies and (iii) the posts of Tahsildars, Junior Engineers and Civil Assistant Surgeons. In order to improve their promotion prospects, service cadres should be organized to the extent possible on appropriate local basis upto specified gazetted level, first or second, as may be administratively convenient.

(4). A high power administrative tribunal should be constituted to deal with the grievances of services regarding appointments, seniority, promotion and other allied matters. The decisions of the Tribunal should ordinarily be binding on the State Government. The constitution of such a tribunal would justify limits on recourse to judiciary in such matters.

(5). In order that implementation of measures based on the above principles does not give rise to litigation and consequent uncertainity, the Constitution should be suitably amended to the extent necessary conferring on the President enabling powers in this behalf.

Implementation of this Six-Point Formula envisaged, *inter alia*, amendment of the Constitution conferring power on the President of India in order to secure smooth implementation of the measures based upon the Six-Point Formula without giving rise to litigation and consequent uncertainty. It was in pursuance of this requirement of giving effect to the six point formula that Article 371-D was introduced in the Constitution by the Constitution (Thirty-second Amendment) Act, 1973 which came into force with effect from July 1, 1974.

The Statement of Objects and Reasons for the Constitution (32nd Amendment) Act, 1972, reads thus:-

"When the State of Andhra Pradesh was formed in 1956, certain safeguards were envisaged for the Telengana area in the matter of development and also in the matter of employment opportunities and educational facilities for the residents of that area. The provisions of clause (1) of Article 371 of the Constitution were intended to give effect to certain features of these safeguards. The Public Employment (Requirement as to Residence) Act, 1957, was enacted inter alia to provide for employment opportunities for residents of Telengana area. But in 1969 [in the case of *A.V. S.N. Rao* v. *Andhra Pradesh*, (1969) 1 SCC 839: (1970) 1 SCR 115], the Supreme Court held the relevant provision of the Act to be unconstitutional insofar as it related to the safeguards envisaged for the Telengana area. Owing to a variety of causes, the working of the safeguards gave rise to a certain amount of dissatisfaction sometimes in the Telengana area and sometimes in the other areas of the State. Measures were devised from time to time to resolve the problems. Recently several leaders of Andhra Pradesh made a concerted effort to analyse the factors which have been giving rise to the dissatisfaction and find enduring answers to the problems with a view to achieving fuller emotional integration of the people of Andhra Pradesh. On September 21, 1973, they suggested certain measures (generally known as the Six-Point Formula) indicating a uniform approach *for promoting accelerated development of the backward areas of State so as to secure the balanced development of State as a whole and for providing equitable opportunities to different areas of State in the matter of education, employment and career prospects in public services*. This formula has received wide support in Andhra Pradesh and has been endorsed by the State Government.

2. This Bill has been brought forward to provide the necessary constitutional authority for giving effect to the Six-Point Formula insofar as it relates to the provision of equitable opportunities for people of different areas of the State in the matter of admission to educational institutions and public employment and constitution of an Administrative Tribunal with jurisdiction to deal with certain disputes and grievances relating to public services, The Bill also seeks to empower Parliament to legislate for establishing a Central University in the State and contains provisions of an incidental and consequential nature including the provision for the validation of certain appointments made in the past. As the Six-Point Formula provides for the discontinuance of the Regional Committee constituted under clause (1) of Article 371 of the Constitution, the Bill also provides for the repeal of that clause".

ARTICLE 371-D: ITS SCOPE:

The primary purpose of introducing Article 371-D was twofold: (*i*) To promote accelerated development of the backward areas of the State of Andhra Pradesh so as to secure balanced development of the State as a whole, and (*ii*) to provide equitable opportunities to different areas of the State in the matter of education, employment and career prospects in public service. To achieve this primary object, clause (1) of Article 371-D empowers the President to provide, by order, for equitable opportunities and facilities for the people belonging to different parts of the State in the matter of public employment and in the matter of education. Clause (2) is complementary to clause (1) and particularises matters for which an order, made under clause (1), may provide. Sub-clause (*c*)(*i*) thereof enables the President to specify in his Order, the extent to which, the manner in which and the conditions subject to which, preference or reservation shall be given or made in the matter of direct recruitment to posts in any local cadre under the State Government or any cadre under any local authority. Sub-clause (*c*) further makes it clear that residence for a specified period in the local area, can be made a condition for recruitment to any such cadre. (**Chief Justice of A.P. Vs. L.V.A. Dixitulu**[4]**; P. Sambamurthy Vs. State of A.P.**[5]).

Article 371-D is a special provision which makes a departure from the general scheme of the Constitution. (**Govt. of A.P. Vs. A. Suryanarayana Rao**[6]). The area of departure cannot, therefore, extend beyond what is unmistakably and specifically delineated by the words employed therein or in the Presidential Order made thereunder. Article 371-D, in effect, enables the President to make an order

enabling prescription of “residence” in a part of the State for employment or appointment to a public office in that State. Clause (10) of Article 371-D gives overriding effect, both to the provisions of Article 371-D and an order made by the President thereunder, over other provisions of the Constitution and any other law in force. Thus, prescription of “residence” in a part of the State of Andhra Pradesh is permissible, notwithstanding the prohibition under Article 16(2), provided such a prescription has been made under Article 371-D or the Presidential Order made thereunder. It is also necessary to note that the scheme of Article 371-D was held to be valid, intra vires the amending power of Parliament and as not to militate against the basic structure of the Constitution. (**Dr. C. Surekha Vs. Union of India**[7]; **Fazal Gafoor Vs. Union of India**[8]; **B. Ramesh Vs. University of Health Sciences**[9]; and **Devarakonda Rajesh Babu Vs. NIMS**[10]). The provisions of Article 371-D and the Presidential Order are insulated from any attack or challenge based on any other provision of the Constitution or any other law for the time being in force. It is also not open to challenge on the ground of violation of Part III or any other provision of the Constitution, (**Dr. B. Sudhakar Vs. Union of India**[11] **Dr. Fazal Ghafoor Vs. The Principal**, **Osmania Medical College, Hyderabad**[12]) , since the Presidential Order has been given overriding effect.

PRESIDENTIAL ORDER: SCOPE AND EXTENT OF THE POWER OF THE STATE GOVERNMENT THEREUNDER:

In exercise of the powers conferred by clauses (1) and (2) of Article 371-D of the Constitution the President made, with respect to the State of Andhra Pradesh, the “A.P. Public Employment

(Organization of Local Cadre and Regulation of Direct Recruitment) Order, 1975", (hereinafter referred to as the Presidential Order), which was notified in G.S.R. 524(E) and came into force on 18.10.1975. Para 2(d) of the Presidential Order defines a local authority as not include any local authority which is not subject to the control of the State Government. Para 2(e) defines "local cadre" to mean any local cadre of posts under the State Government organized in pursuance of paragraph 3, or constituted otherwise for any part of the State. Under Para 2(2), the General Clauses Act, 1897 applies for the interpretation of the Presidential order as it applies for the interpretation of a Central Act. Para 3 relates to organization of local cadres and, under sub-para (1) thereof, the State Government was hitherto required, within a period of twelve months from the commencement of the Order, to organize classes of posts in the civil services and classes of civil posts under the State into different local cadres for different parts of the State to ***"the extent and in the manner hereinafter provided"***. The period of twelve months prescribed in Para 3(1) was enhanced to eighteen months vide G.O.Ms. No. 794 dated 12.11.1976 and twenty seven months vide G.O.Ms. No. 728 dated 27.10.1977. The period of twenty seven months prescribed in Para 3(1), for organizing different local cadres for different parts of the State, expired on 17.01.1978 and thereafter the State Government no longer had the power to organize different local cadres for different parts of the State. With a view to enable organization thereafter, of different local cadres for different parts of the State, a proviso was inserted to Para 3(1), as notified in G.O.Ms. No. 34 dated 24.01.1981, which enables the President, notwithstanding the expiration of the period specified in Para 3(1), to make an order, whenever he considers it expedient to do so, requiring the State Government to organize any classes of posts in the civil

services of and classes of civil posts under the State into different local cadres for different parts of the State.

While Para 3(1) ordained the State Government to organize classes of posts in the civil services of the State, and classes of civil posts under the State, into different local cadres for different parts of the State, the "**extent**" to which, and the "**manner**" in which, such classes of posts were required to be so organized was, specifically prescribed, to be as provided thereafter in the Presidential Order. Thus, not all classes of posts in the civil services of the State, and not all classes of civil posts under the State, were required to be organized into local cadres, and it was only to the extent provided for in the Presidential Order itself was the State Government required to so organize them into local cadres. Even under the proviso to Para 3(1), it is only to the extent the President considers it expedient that he may make an order requiring the State Government to organize any classes of posts in the civil services of the State, and classes of civil posts under the State, to be organized into different local cadres for different parts of the State.

The object of organizing different local cadres for different parts of the State is clear from Paragraphs 4 and 5 of the Presidential Order. Under Para 4(1) persons holding posts, required to be organized into local cadres,were to be allotted to such cadres by the State Government in accordance with the principle and procedure specified in the Presidential Order. Under Para 5(1) each part of the State, for which a local cadre has been organized in respect of any categories of posts, shall be a separate unit for purposes of recruitment, appointment, seniority, promotion, transfer etc. Once a local cadre was organized under Para 3(1) each part of the State, for which such a

local cadre was organized, was required to be treated as a separate unit and it is only from amongst persons allotted thereto was promotions to be effected and their seniority determined. In view of Para 5(1), a local cadre is a distinct and separate unit and, for matters prescribed therein, persons who do not belong to the said local cadre or those who belong to other local cadres cannot form part thereof. It is for this reason that, both in **S. Prakasha Rao Vs. Commissioner of Commercial Taxes**[13] and in **M. Kesavulu**[1], the Supreme Court and the Division Bench of this Court held that a local cadre, once organized, cannot be meddled with.

On an analysis of the provisions of the Presidential Order, it is clear that, having regard to historical compulsions which led to the introduction of Art. 371-D, the Presidential Order provides the framework for intra-state compartmentalization of certain posts under the rubric of local cadres, constituted for parts of the State, and protects the service conditions of members allotted or recruited to such local cadres. Local cadres are thus the result of historical compulsions engendered by economic and other differentia operating between parts of the State of Andhra Pradesh and of the felt grievances of residents of such parts of the State. It is well to remember the historical compulsions which led to the making of the Presidential Order, which is buttressed by the overriding effect given to the provisions of the Presidential Order not only against the exercise of majoritarian political and executive choices of the State, but is also made operative against any other provision of the Constitution of India (Article 371-D (10) read with para 11 of the Presidential Order) (**G. Anantha Reddy Vs. Andhra Pradesh Admn. Tribunal, Hyderabad**[14]).

CADRES UNDER A LOCAL AUTHORITY CANNOT BE

ORGANISED INTO LOCAL CADRES:

Panchayats, Mandal Parishads and Zilla Parishads are local authorities both under Part IX of the Constitution and under the provisions of the A.P. Panchayat Raj Act, 1994. While the local cadres, organized in the department of school education, in G.O.Ms.No.529 dated 14.5.1976, included the posts of teachers in government schools, it did not extend to the posts of teachers under local authorities. Posts of teachers under local authorities were, hitherto, not organized into local cadres.

The learned Advocate-General would emphasize, placing reliance on **Mathurdas Kedia Vs. S.D. Munshaw**[15] and **State of Gujarat Vs. Ramanlal Keshavlal Soni**[16], that posts under local authorities are also civil posts as the posts have been provisionalised, there exists a master and servant relationship between the State Government and such employees, and their salaries are paid from out of the consolidated fund of the State. It is not necessary for us to examine whether posts under "local authorities" are civil posts. For the purpose of these batch of cases we shall presume that they are. Since only such "local authorities", which are subject to the control of the State Government, come under the purview of the Presidential Order, as provided for under Para 2(d) thereof, we shall also presume that the mandal parishad and zilla parishad schools, wherein teachers and other employees are employed, are also subject to the control of the State Government. As noted above the Presidential Order does not require all classes of posts in the civil services of the State, or all classes of civil posts under the State, to be organized into different local cadres for different parts of the State and it is only to the *"**extent**"* and in the *"**manner**"* provided in the Presidential Order are such posts

required to be organized into different local cadres. Para 3(2) requires categories of posts of lower division clerks and below in each *"**department**"* in each District to be organized into a separate local cadre. The distinction between posts in *"**departments**"* of the State Government and posts under any *"**local authority**"* is clear from Para 6 and 8 of the Order. While the words *"**local cadre**"* have been used in relation to posts in departments of the State Government in clause (i) of Para 6(1), when it comes to posts under a local authority, the words used in clause (ii) of Para 6(1) is *"**cadre**"* and not *"**local cadre**"*. A similar distinction is made between clauses (i) and (ii) in sub-paras (2) and (3) of Para 6 also. Even when it comes to posts under the Hyderabad Urban Development Authority, a local authority, Para 6(4) uses the words *"**cadre**"* and not *"**local cadre**"*. Similarly under clause (a) of Para 8(1), while the words "***local cadre***" are used in relation to the State Government, in clause (b) for posts under a local authority, the words used are "***cadre***" and not "***local cadre***". This distinction is also maintained in clauses C(1) and C(2) of Para 8(1) and clauses (a) & (b) of Para 8(2). It is only in respect of classes of civil posts in departments of the State Government, does the Presidential Order require a local cadre to be organized and not in respect of classes of civil posts under a local authority. It is for this reason that, while the cadres/posts of teachers in government schools was organised into different local cadres, for different parts of the State, in G.O.Ms. No. 529 dated 14.05.1976, cadres/posts of teachers in schools under local authorities was not. In this context, it is useful to refer to **M.P. Ananthanarayana Vs. State of A.P.**[17], wherein a Division Bench of this Court observed:-

"……..At this juncture, we must also examine the decision of the Tribunal, which held that the Presidential Order has a limited application to the Board. It was held so in O.A.No.5792 of 2003 and batch on 29-10-2004. The correctness of that decision was

challenged earlier before this Court in three writ petitions stated supra. Unfortunately, the issue was not decided by this Court as the petitioners preempted the decision by withdrawing the said writ petitions. Dealing with the issue, a Division Bench of the Tribunal held as follows:

> " xxxx. Thus the provisions contained in para 6 and 8 of the presidential order relating to local areas and reservation in favour of local candidates in the matter of direct recruitment to posts whose scale of pay does not exceed 480 per mensem or any amount corresponding to it as may be specified in this regard in the successive revisions of pay scales granted by the State Government from time to time are applicable to posts born on the establishment of a local authority. **It is significant to note that in para-3, 4, 5 of the Presidential Order, there is no mention about the posts born on the establishment of a local authority where as in para-6 and 8 there is mention about the posts born on the establishment of a local authority. This clearly goes to show that para-3, 4 and 5 of the Presidential Order has no application to posts born on the establishment of a local authority**."

We have examined the scheme and language of the Presidential Order and we approve the findings recorded by the Tribunal insofar as the applicability of the Presidential Order to the Board is concerned……." (emphasis supplied)

The submission of the Learned Advocate General that, since posts of teachers in mandal parishad and zilla parishad schools are civil posts, they come under the control of the department of education of the State government and, as they are paid salaries and allowances from the budget of this department, it is always open to the government to bring such teachers within the department of education, does not merit acceptance. Even if it were to be held that such teachers hold civil posts, the fact remains that they are working in schools of mandal parishads and zilla parishads which, under Part IX of the Constitution and the provisions of the A.P. Panchayat Raj Act, are institutions of local self government. I n **Ranga Reddy District Sarpanches' Association Vs. Government of A.P.**[18], a larger bench of five judges of this court, held that it is for the State Legislature to decide, by expressing its will through legislation or subordinate legislation, as to what extent Panchayat Raj Institutions should be conferred with power and authority and that Articles 40 and 243-G of the Constitution have left it to the wisdom of the State Legislature as regards the extent of the powers and authority to be endowed on Panchayat Raj institutions. It

is, however, well to remember that the powers to be conferred on the Panchayats, by the State Legislature, must be such as are required to enable them to function as institutions of self-government. Under Section 4(3) of the A.P. Panchayat Raj Act, 1994 the Gram Panchayat, under Section 148(4) the Mandal Parishad and under Section 177(2) the Zilla Parishad, are bodies corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to enter into contracts and, by its Corporate name to sue and be sued. These Panchayat Raj institutions are independent legal entities distinct from that of the Government of Andhra Pradesh. The A.P. Panchayat Raj Act, 1994, made pursuant to the 73rd amendment and introduction of Part IX to the Constitution could not have and, in fact, has not treated these panchayats as forming part of any department of the State Government, for that would defeat the very object of making panchayats institutions of local self-government.

We are unable to accept the submission of the learned Advocate General that, since the Government functions through different departments for the sake of administrative convenience, teachers employed under local authorities can always be brought under the department of education. No provision or word in the Presidential Order can be read in isolation. It cannot be said that, without any purpose, a distinction is made in the Presidential Order between *"**local cadres**"* in departments of the Government and "***cadres***" under a local authority. (**V. Jagannadha Rao Vs. State of A.P**[19]).

It is a cardinal principle of interpretation of statutes that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning.

(**Gurudevdatta VKSSS Maryadit Vs. State of Maharashtra**[20]). The legislature may be safely presumed to have intended what the words plainly say. (**Bhaiji Vs. Sub-Divisional Officer, Thandla**[21]). What is to be borne in mind is what has been said in the statute and what has not been said. A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided. (**Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. Vs. Custodian of Vested Forests**[22], **Shyam Kishori Devi Vs. Patna Municipal Corpn**[23], **A. R. Antulay Vs. Ramdas Sriniwas Nayak**[24], **Dental Council of India Vs. Hari Prakash**[25], **J. P. Bansal Vs. State of Rajasthan**[26] and **State of Jharkhand Vs. Govind Singh**[27]). The primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. (**Unique Butyle Tube Industries Pvt. Ltd. Vs. Uttar Pradesh Financial Corporation**[28]).

Accepting the aforesaid contention of the learned Advocate General would also render certain provisions of the Presidential Order redundant and mere surplussage. Not only does clause (i) of sub-paras (1), (2) and (3) of Para 6 use the words ***"local cadre"*** in relation to posts in departments of the State Government, clause (ii) of Sub-paras (1), (2) and (3) of Para 6 uses the words ***"cadre"*** in relation to posts under any local authority. Similarly while Clauses (a)& C(1) of Para 8(1) and clause (a) of Para 8(2) uses the words ***"local cadre"*** in relation to the State Government, Clause (b) and C(ii) of Para 8(1) and Clause (b) of Para 8(2) uses the words ***"cadre"*** in relation to any local

authority. If these local authorities were to be construed as departments of the State Government, Clause (ii) of sub-paras (1), (2) and (3) of Para 6 and Clause (b) and C(ii) of Para 8(1) and clause (b) of Para 8(2) would be rendered mere surplussage.

STATE GOVERNMENT NO LONGER HAS THE POWER, UNDER THE PRESIDENTIAL ORDER, TO ORGANISE LOCAL CADRES:

The obligation of the State Government to organise local cadres, under Para 3(1), expired on 17.01.1978. Thereafter, under the Presidential Order, the State Government no longer had the power to organize classes of posts in the civil services of the State, and classes of civil posts under the State, into different local cadres for different parts of the State. It is only to the limited extent that Article 371-D of the Constitution of India requires and the Presidential Order so provides can different local cadres be organized for different parts of the State. But for the provisions of Article 371-D and the Presidential Order, any such local area reservation would have fallen foul of Article 16(2) and would be void in view of Article 13 (2) of the Constitution. Since the source of its powers, in organizing different local cadres for different parts of the State after 17.1.1978, is not traceable specifically to any of the provisions of the Presidential Order, any action of the State, in seeking to organize local cadres, is no longer protected under Article 371-D(10) of the Constitution of India, and any attempt by the State Legislature or the State Executive to organize different local cadres for different parts of the State would be in violation of Article 16(2) of the Constitution.

While it is true that the General Clauses Act has been made applicable, under Para 2(2), for the interpretation of the Presidential Order as it applies for the interpretation of the Central Act, it is well to remember that the General Clauses Act is but an aid for interpretation

and cannot be pressed into service to negate the express provisions of the Presidential Order. Section 21 of the General Clauses Act can be invoked only if, and to the extent, if any, the context and the scheme of the Presidential Order so permits. (**State of Bihar Vs. D.N. Ganguly**[29]**; State of M.P. Vs. Ajay Singh**[30], **Govt. of A.P. Vs. Y.V. Vivekananda Reddy**[31]). Under Section 21 of General Clauses Act, the power to make an order includes the power to amend, vary or rescind any such order. Such a power to amend, vary or rescind is however to be exercised in the like manner and subject to the like sanction and conditions as is applicable to the exercise of power to make an order. Section 21 can only be exercised within the limits prescribed by the provisions conferring such a power. The power to rescind any order, conferred generally in Section 21 of the General Clauses Act, is clearly inapplicable in the scheme of the Presidential Order which expressly prohibits the State Government from exercising the power to make an order, organising local cadres, after 27 months of the commencement of the Presidential order. To the extent a specific provision is made under the proviso to Para 3(1) of the Presidential Order, conferring power exclusively on the President to make an order requiring local cadres to be organized, Section 21 of the General Clauses Act cannot be invoked by the State Government since it no longer has the power to make an order to organise local cadres. The context as well as the scheme of the Presidential Order clearly indicates that Section 21 of the General Clauses Act, 1897 cannot be invoked to enlarge the State Government's power to organize local cadres beyond 27 months after the commencement of the Presidential Order. There being no express power given by the Presidential Order, to the State Government to organize local cadres

thereafter, no such power can be exercised by the State Government. Para 3(1) of the Presidential Order and its proviso, in effect, provide that the State Government should have no power to organize local cadres after the stipulated period. Since the power to make an order, organizing local cadres, is no longer available, it must necessarily follow that the State Government does not have the power to rescind its earlier order organizing local cadres. Section 21 is not a source of power and cannot be called in aid to abolish local cadres. The rule of construction embodied in Section 21 of the General Clauses Act cannot apply to Para 3(1) of the Presidential Order, since the subject-matter, context and effect of the proviso to Para 3(1) is inconsistent with such application. (**Ajay Singh**[30]). On the other hand, Section 21 of the General Clauses Act would confer power on the President to require the State Government to abolish a local cadre since it is he who has the power to make an order requiring the State Government to organize local cadres.

Except in areas where, and to the extent, Article 371-D of the Constitution of India and the Presidential Order made thereunder specifically provide, any requirement of prior residence in a part of the State for appointment in the civil services of the State would fall foul of Article 16(2) of the Constitution of India. While the State's power to create posts/cadres or to abolish posts has not been taken away by Article 371-D, such a power to create posts, in the absence of the protection conferred on it under the Presidential Order, cannot be exercised in violation of Article 16(2) of the Constitution of India. It is only the President, under the proviso to Para 3(1), who has been conferred such a power. The State government neither has the inherent power to organize local cadres after 17.01.1978 nor can such

a power be traced to Para 3(7) of the Presidential Order. Under Para 3(7), in organising a separate cadre in respect of any category of posts in any department for any part of the State, nothing in the Presidential Order shall be deemed to prevent the State Government from organising or continuing more than one cadre in respect of such category in such department for such part of the State. Para 3(7) of the Presidential Order, fell for consideration in **S. Prakasha Rao**[13], and the Supreme Court observed:

> .....Similarly, the power given to the State Government in sub-paragraph (7) of Paragraph 3 of the order is only to organize a separate cadre in respect of any category of posts in any department when more than one cadre in respect of such category exists in each department, so the State Government may organize one cadre when more than one cadre in respect of different categories of posts exist in a zone under Para 3(1) of the Order. It is clear when we see the language in paragraph 3(7) which says that: nothing in this order shall be deemed to prevent the State from organising. Take for instance while creating local cadre co-terminus with the administrative control of the Deputy Commissioner, Commercial Taxes, local cadre for Senior Assistants may be created. It is also made manifest by instructions 7 and 9(*e*) of the instructions contained in GOMs No. 728 GAD dated November 1, 1975. But, as stated earlier, it is only for the purpose of administrative convenience, not for the purpose of recruitment, seniority or promotion etc., as the case may be.....".

While organizing local cadres, within the 27 month period stipulated in para 3(1), the State Government is entitled, under Para 3(7), to organize more than one cadre in respect of such categories of posts in such departments for such parts of the State. As held in **S. Prakasha Rao**[13], organizing separate cadres is only for the purpose of administrative convenience and not for the purpose of recruitment, seniority or promotion etc. The word ***"such"*** used in para 3(7) is also significant. While organizing a separate cadre in respect of any category of posts in any department in any part of the State, the State Government is empowered to organize and continue more than one cadre in respect of ***such*** categories of posts. Thus a category of posts can be organized into more than one local cadre. The power to organize more than one local cadre, even if it were held to be available

under Para 3(7), could only have been exercised by the State Government, under Para 3(1), within the period of 27 months from the date of commencement of the Presidential Order and not thereafter.

The consequences of organizing different local cadres for different parts of the State is that each of these local cadres, being a separate unit for purposes of recruitment, seniority, promotion etc, in effect, provides for reservation on the basis of residence in a part of the State of Andhra Pradesh. But for the protection conferred on it by the Presidential Order, any such action would have been void under Article 13(2) as it would contravene Article 16(2). The power of the State Government to organize different local cadres for different parts of the State, *"**to the extent and in the manner provided in the Presidential Order**"*, was available only for a period of 27 months from the commencement of the Presidential order i.e., prior to 17.01.1978. It is only during the period when such a power was available to the State Government was it empowered, under Para 3(7) to organize a separate cadre in respect of any category of posts in any department for any part of the State. Since the State Government is divested of the power to organize local cadres under Para 3(1), after 17.01.1978, it is no longer entitled to organize a separate cadre in respect of any category of posts in any department for a "***part of the State***".

While posts in departments of the Government were required to be organized by the State Government into local cadres within 27 months from the date of commencement of the Presidential Order, Para 3(8) provided that, where it was not practicable or expedient to organize local cadres in respect of any non-gazetted category of posts in any department of the State Government, and if the Central Government was satisfied that it was not so practicable, then the Central Government had the power to issue a notification to declare

that it was not practicable or expedient to organize local cadres under Para 3(1) in respect of such non-gazetted categories of posts in departments of the Government. Para 3(8) cannot be read out of context. While all non-gazetted categories of civil posts, in *"**departments**"* of the State Government, were required to be organized into local cadres within the time stipulated in Para 3(1), even in respect of such posts in the departments of the State Government, the Central Government was empowered to declare that the Presidential Order did not apply. Para 3(8) cannot be read as conferring a power on the State Government to organize local cadres even after expiry of 27 months from the date of commencement of the Presidential Order.

In **S. Prakasha Rao**[13], the Supreme Court observed:-

"……Dr L.M. Singhvi, the learned senior counsel for the appellants, contends that paragraph 3(7) of the Order empowers the State Government to create a zone within the Warangal zone for the purpose of recruitment, seniority and promotion. The State Government has inherent power in that regard. There is no express prohibition in that regard in the Order. The phrase or constituted otherwise engrafted in the definition of local cadre in paragraph 2(*e*) read with paragraph 3(7) gives ample power to the State Government to organise any local cadre within the zone for the Commercial Taxes Department. The action thus taken by the State Government is clearly within its power….." He further contended that in maintaining harmony in Centre-State relationship, the State Government shall continue to have its inherent power to organise its local cadre to meet the exigencies of its administrative needs. The prior approval or concurrence of the Central Government is redundant. We find no force in these contentions. **It is already seen that in exercise of the power under paragraph 3(1) of the Order the State Government shall, within a period of twelve months from the date of the commencement of the Order, organise class or classes of posts in the civil services of, and class or classes of civil posts, under the State into different local cadres for different parts of the State *in the manner* therein provided.**

It is already seen that through GOMs No. 581, the State Government in fact had organised the Commercial Taxes Departments by constituting different local cadres and Warangal zone comprised of the four revenue districts, namely, Adilabad, Karimnagar, Khammam and Warangal was declared as local area for local cadres of the department. Having done so, the question emerged whether the State Government has further power to reorganise the local cadre within the zone. **In our considered view, we have no hesitation to hold that once the State Government has organised the class or classes of posts in the civil services of and class or classes of civil posts, under the State as local cadres, it ceases to have any power to bifurcate or reorganise a zone within a zone, cadre or cadres therein.**

In exercise of the power under proviso to paragraph 3(1), it is for the President notwithstanding the expiry of the period of twelve months prescribed in sub-paragraph (1) of paragraph 3, by an order require the State Government whenever he considers it expedient so to do to have the power under paragraph 3(1) exercised. Thereby, it is clear that the State Government shall have to place necessary material before the President; the President shall consider that it is expedient to organise any class or classes of posts in the civil services of and class or classes of civil posts, under the State into a further local cadre within the local cadre in the zone already prescribed and to pass an order in that regard requiring the State Government to so organise it. It is made clear that for the purpose of efficient administration or conveni1ence, the State Government may create division/divisions within the local area or local cadre. But for the purpose of recruitment, seniority, promotion, discharge, etc. the local cadre once organised under paragraph 3(1) shall be final and continue to be operative until action is taken under proviso to sub-paragraph (1) of paragraph 3 of the Order. …….

It is seen that the order was made pursuant to the power given to the President under Article 371-D, which is a special provision made under the Constitution (Thirty-second Amendment) Act, 1973 peculiar to the State of Andhra Pradesh due to historical background. Therefore, the State Government have no inherent power in creating a zone or organising local cadre within the zones except in accordance with the provisions made in the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation for Direct Recruitment) Order. It is true that the clause "or constituted otherwise" defined in paragraph 2(*e*) is of wide import, but is only relatable to the power given by the President to the State Government to organise local cadre. Paragraph 3(1) is the source of that power, but the exercise thereof is hedged with a limitation of twelve months from the date of commencement of the Order. Therefore, the power to organise class or classes of post of civil services of, and class or classes of civil posts, under the State into different local cadres should be exercised by the State Government in accordance with paragraph 3(1) before the expiry of the twelve months from October 20, 1975. If the exercise of the power is not circumscribed within limitation, certainly under General Clauses Act the power could be exercised from time to time in organising local cadres to meet the administrative exigencies. The prescription of limitation is a fetter put on the exercise of power by the State Government. Obviously, realising this reality and the need to organise local cadres, subsequent thereto the amendment was made and was published in GOMs No. 34 G.A. dated January 24, 1981 introducing proviso to paragraph 3(1). Thereunder, notwithstanding the expiry of the said period, the President alone has been given power to organise local cadres in respect of class or classes of posts in civil services and class or classes of civil posts, under the State. That too subject to the conditions precedent laid therein. Thus, it is the President and the President alone who has been given power under proviso by an order to require the State Government to organise the local cadres in relation to any class or classes of posts in the civil services of and class or classes of civil posts under the State into different local cadres. It could be considered in yet another perspective. Paragraph 2(*e*) indicates that President himself may create a local cadre instead of requiring the State Government to organise local cadre. For instance, paragraph 3(6) empowered the President to create local cadre for the city of Hyderabad. Similarly, under proviso to paragraph 3(1) the President may require the State Government to create a local cadre within a zone. So the phrase or constituted otherwise cannot be understood de hors the scheme of the Presidential Order…… Therefore, the phrase constituted otherwise is to be understood in that context

and purpose which Article 371-D and the Presidential Order seek to achieve. If the interpretation given by the appellants is given acceptance it amounts to giving blanket power to the State Government to create local cadres at its will tending to defeat the object of Article 371-D and the Presidential Order…… (emphasis supplied)

As held in **S. Prakasha Rao**[13], once the State Government has organized class or classes of posts in civil services of and class or classes of civil posts under the State into local cadres, and the period specified in Para 3(1) has expired, it ceases to have any power to meddle with such local cadres thereafter. The only source of power, under the Presidential Order, for the State Government to organize local cadres on its own was Para 3(1). This power was not only circumscribed by the words "***to the extent and the manner hereinafter provided***", fetters were also put on its exercise in terms of a time limit of 27 months from the date of commencement of the Presidential Order. If no such limitation had been prescribed then, in view of the provisions of the General Clauses Act having been made applicable to the Presidential Order, the power under Para 3(1), to organize local cadres, could have been exercised from time to time.

In view of the time limit prescribed, on the expiry of the period of 27 months from the date on which the Presidential Order came into force, the State Government ceased to have any power to organize local cadres. It is with a view to overcome this hurdle, and in order enable cadres, newly created thereafter, to be organized into local cadres, was a proviso inserted to Para 3(1) giving power to the President to require local cadres to be organized. Since the Presidential Order, after expiry of 27 months from the date of commencement of the Presidential Order, has conferred power to organize local cadres only on the President, and not on the State Government, the contention that the State Government could organize local cadres from time to time and obtain approval of the President thereafter is contrary both to the

letter and the spirit of the Presidential Order.

Learned Advocate General would place reliance on **Union of India Vs. Philip Tiago De Gama of Vedem Vasco De Gama**[32] to contend that if a strict grammatical interpretation gives rise to absurdity or inconsistency, the Court could discard such interpretation which would give effect to the purpose of the Legislature and that could be done, if necessary, even by modification of the language used. Courts should not, ordinarily, add words to a statute or read words into it which are not there, especially when a literal reading thereof produces an intelligible result. (**Delhi Financial Corpn Vs. Rajiv Anand**[33]). There is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. Courts expound the law, they do not legislate. (**State of Kerala Vs. Mathai Verghese**[34], **Union of India Vs. Deoki Nandan Aggarwal**[35]). A Judge is not entitled to add something more than what is there in the Statute by way of a supposed intention of the legislature. (**Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd**[36]). The legislative *casus omissus* cannot be supplied by judicial interpretative process. ((**Maruti Wire Industries Pvt. Ltd. Vs. S.T.O., I.S.T. Circle, Mattancherry**[37], **Govind Singh**[27]). In interpreting a statute the court cannot aid the legislature's defective phrasing of an Act nor can it add or amend by construction to make up deficiencies which are left there. (**State of Gujarat Vs. Dilipbhai Nathjibhai Patel**[38]). Courts are not entitled to read words into an Act unless clear reasons for it is to be found within the four corners of the Act itself. (**The Union of India Vs. Braj Nandan Singh**[39]). We find no inconsistency, on a literal

interpretation of the provisions of the Presidential Order, nor can it be said that the construction placed by us thereon results in absurdity.

Sri D. Prakash Reddy, learned Senior Counsel, would submit that a harmonious and purposive construction of the various provisions of the Presidential Order would necessitate Para 3(1) to be read as a mandate to the State Government to organize local cadres within 27 months of the creation of a new cadre. According to the learned Senior Counsel, while the State, under Para 3(1) is required to organize a newly created cadre into a local cadre within 27 months of its creation, it would necessarily have to obtain approval of the President under the proviso to Para 3(1) to the steps taken by it in this regard and that, in the interregnum, any appointments or promotions made would only be provisional under Para 13. He would submit that since Act 27 of 2005 has abolished cadres, which had hitherto been localized, and as these cadres ceased to exist, the local cadres also did not exist thereafter, that a newly restructured unified service has been created by Act 27 of 2005 which has been organized into local cadres under the rules in G.O.Ms. No. 95 and 96 dated 25.07.2005 and, since the State Government has already acted in accordance with sub-para (1) and (7) of Para 3 and has discharged its obligations of organizing, the newly created cadres, into local cadres, any appointment made or promotions effected in these cadres would remain provisional under para 13, till approval was accorded by the President.

The submission of Sri D. Prakash Reddy, learned Senior Counsel, while attractive at first blush, necessitates being rejected on a detailed examination of the provisions of the Presidential Order. If the State Government were to be held to have such a power to create local cadres at any time within 27 months of its creation, it would

render the words *"**within a period of twenty-seven months from the commencement of this Order**"* in Para 3(1) mere surplussage and the proviso to Para 3(1) otiose. No construction which requires words to be ignored or construed as inapposite surplusage is permissible. Courts have adhered to the principle that effort should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute, as surplusage, if they can have a proper application in circumstances conceivable within the contemplation of the statute. (**Gurudevdatta VKSS**[20], **Manohar Lal Vs. Vinesh Anand**[40]). When the legislative intent is found specific mention and expression in the provisions of the Act itself, the same cannot be whittled down or curtailed and rendered nugatory. (**Bharathidasan University Vs. All India Council for Technical Education**[41]). Effect should be given to all the provisions and a construction that reduces one of the provisions to a "dead letter" must be avoided. (**Anwar Hasan Khan Vs. Mohd. Shafi**[42]). Further the interpretation, as canvassed by the learned Senior Counsel, would run contrary to the law laid down in **S. Prakash Rao**[13] wherein the Supreme Court, while interpreting the provisions of the Presidential Order, had observed that once local cadres were created, the State Government ceased to have any power to meddle with it after expiry of the period prescribed in Para 3(1) and it is only for the President, under the proviso to Para 3(1), by order, to require the State Government to organize local cadres.

It is necessary to note that Article 371-D, which enables prescription of residence in a part of the State as a requirement for appointment, carves out an exception to the general scheme of the Constitution. It is only when the source of power is referable to a

specific provision in the Presidential Order itself would exercise of such power be entitled for protection under clause (10) of Article 371-D of the Constitution of India.

While the apprehensions expressed by Sri D. Prakash Reddy, Learned Senior Counsel, that if the time limit prescribed in Para 3(1) is read as an embargo for the State to organize local cadres thereafter, it would result in a situation where the State Government, on creating new cadres, would no longer be required to organize them into local cadres thereby defeating the very purpose and object for which Article 371-D was introduced and the Presidential Order made, cannot be said to be without basis, but then, conferring such a power on the Government to create local cadres, even after expiry of the 27 month period after commencement of the Presidential Order, would be against the express provisions of the Presidential Order itself.

The answer to the problem lies in the proviso to Para 3(1) which empowers the President to require the State Government to organize local cadres. While the State Government may itself request the President to require it to organize local cadres, such a request can also be made by others as well. The power conferred on the President, under the proviso to Para 3(1), need not be exercised only at the behest of the State Government. The President can, on his own, require the State Government to organize local cadres. But till the President so requires, any action taken by the State Government to prescribe residence in a part of the State, as a requirement for appointment, promotion, seniority etc., would be in violation of Article 16(2) of the Constitution. It is only after the President makes such an order can the State Government take steps to organize local cadres. We must express our inability to agree with the submissions of both the Learned Advocate General, and Sri D. Prakash Reddy, Learned

Senior Counsel, that appointments made and promotions effected in newly created cadres, even before approval, for its being organized into local cadres, is accorded by the President, would fall within the ambit of Para 13 of the Presidential Order. It is only after the President requires the State Government to organize local cadres, would Para 13 come into play and any promotions effected thereafter would be provisional till the local cadre is actually organized. Para 13 has no application prior to the President, under the proviso to Para 3(1), requiring the State Government to organize local cadres and any action taken by the State Government to organize local cadres by itself, and not after being required by the President, would be in violation of Article 16(2) of the Constitution. The question of the State Government, on its own, organizing different local cadres for different parts of the State, dehors the provisions of the Presidential Order, does not arise, since any such action would, in effect, amount to providing reservation on the basis of residence in a part of the State and would be ultravires Article 16(2) of the Constitution. It is only after the President, by order, requires local cadres to be organized, would the steps taken by the State Government to organize local cadres come within the protective umbrella of the Presidential Order and be immune from attack on the touch-stone of Article 16(2) of the Constitution.

Rules in G.O.Ms. No. 505 dated 16.11.1998 and G.O.Ms. No. 538 dated 20.11.1998 which were held ultravires the Presidential Order in M. Kesavulu[1] :-

In **M. Kesavulu[1]**, a Division Bench of this Court declared the rules, in G.O.Ms.No.505 dated 16.11.1998, invalid to the extent of posts covered by G.O.Ms.No.529 dated 14.5.1976. The State Government, vide G.O.Ms.No.529 dated 14.5.1976, had organized local cadres, in the department of school education, which included

secondary grade teachers in government schools. The Rules in G.O.Ms.No.505 dated 16.11.1998, in effect, were declared invalid to the limited extent posts, which were organized into local cadres, were sought to be integrated with posts under local authorities which were not organized into local cadres.

The Rules, in G.O.Ms. No. 538 dated 20.11.1998, were also quashed by the Division Bench in **M. Kesavulu**[1]. Note 5(a) to Rule 3 thereunder prescribes that the Regional Joint Director of School Education shall be the appointing authority either for direct recruitment or for promotion in categories of zonal posts in government/panchayat raj institutions and that promotions shall be made on a common seniority zone-wise of teachers in the feeder categories working in schools under the government/panchayat raj institutions. Under note 5(b), the District Educational Officer was specified as the appointing authority for direct recruitment and promotion in district cadre posts in government/panchayat raj institutions. Promotions were required to be made on the common seniority list district-wise of teachers working in government schools and schools run by panchayat raj institutions. Note 6 provided that, for the purpose of preparation of a common seniority list for promotion, the seniority shall be determined with reference to the date of regular appointment. These rules, in effect, sought to integrate teachers in government schools with teachers in schools of panchayat raj institutions, and to form a unified cadre. The Division Bench, in **M. Kesavulu**[1], observed:-

"…. **Therefore, pursuant to the order of the President, the local cadres were organized by the State Government in the Education Department in the aforesaid G.O.Ms.No.529 and it is beyond pale of controversy that the said Order cannot be disturbed and any Orders made in contravention of Constitution of local cadres in accordance with the Presidential Order will be invalid and illegal**.

But, as regards the services of the teachers working in the Panchayatraj Institutions, admittedly, no local cadres have been organized and they continued to be

governed by separate set of Rules namely G.O.Ms.No.936, I.R. dated 17.7.1962, and G.O.Ms.No.33 P.R. dated 15.1.1996 and finally fresh rules were brought into effect in Para-II of G.O.Ms.No.278, Education Department dated 20.6.1983.

As referred to in the above Presidential Order, local cadre had to be in conformity with the Order issued by the President and in fact the local cadres have been framed in respect of various categories in Education Department. As far as posts of L.D.Cs now designated as Junior Assistants and the posts below L.D.C. are made District cadre posts and some of the posts which are above the cadre of L.D.C. namely School Assistant and Deputy Inspector of Schools Grade.I among other non-gazetted categories were organized into zonal cadres. As far as the specified gazetted cadres are concerned, they were categorized into zonal cadres and these cadres are:

(1) Gazetted Inspector of Schools, Headmasters and Headmistresses and Coordinators, Primary Extension Services,

(2) Lecturers in training Colleges (i.e., Government Colleges of Education, and Government Comprehensive Colleges of Education) and Co-ordinators Extension Services Departments attached to Government Colleges of Education and Comprehensive Colleges of Education and Principals of T.T.Is. and

(3) Deputy Secretaries (Education) Zilla Parishads.

Therefore, the question that calls for consideration is whether the posts which were organized into local cadres in pursuance of the Presidential Order can be clubbed with other categories of posts and that too the posts for which no local cadres have been organized.

……As already mentioned, the local area and local cadres have been defined under Presidential Order and when once the local cadres have been organized, it will not be open for the State Government to meddle with the local cadres or local areas, except with the approval of the President of India…..

…….**From the aforesaid decisions, thus it is clear that when once the local cadres has been organized in respect of categories of posts declared by the President of India and in pursuance of which the State Government has issued notification organizing local cadres for local areas, the sanctity of such local cadre has to be maintained except in cases where the amendment was effected with the approval of the President of India.**

Admittedly, in the instant case, various posts have been categorized into District cadre and zonal cadres and the specified gazetted cadres have also been declared as zonal posts as far as the Education Department is concerned and therefore, **these local cadres cannot be merged with other local cadres nor can it be allowed to be diluted; the reasons are obvious that it frustrates the very intentment of organizing the local cadres……..**

When no local cadres has been organized, the question of integrating the same with that of the already organized local cadres does not arise. The contention that the posts of teachers after provincialisation get added to the already existing strength of local cadres organized under the Education Department has to be necessarily rejected. Such an action is invalid and without jurisdiction…….

…..Under those circumstances, we are of the considered view that

G.O.Ms.No.538 is not sustainable in law and the same is liable to be set aside. So also the G.O.Ms.No.505, so far as it seeks to embrace the posts in Education Department for which the local cadre has been organized in G.O.Ms.No.529, dated 14.5.1976 viz., in respect of the Deputy Inspector Schools, Headmaster and Educational Officers, the posts of Gazetted Headmasters, and Head Mistresses, and also Gazetted Head Masters, Headmistresses Grade-II, in Government High Schools is declared as illegal and invalid.....

.....In the result, G.O.Ms.No.538, Education Department dated 26-11-1998 is quashed restoring the rules framed by the Government in G.O.Ms.No.278, dated 20-6-1983. As far as the G.O.Ms.No.505, Education Department, dated 11-11-1998 is concerned, it is declared as invalid to the extent of the posts covered by G.O.Ms.No.529, dated 14-5-1976....." (emphasis supplied)

ACT 27 OF 2005 AND THE RULES NOTIFIED IN G.O.Ms.Nos.95 AND 96 DATED 25-7-2005 ARE ULTRAVIRES ARTICLE 16(2) & 371-D OF THE CONSTITUTION AND THE PRESIDENTIAL ORDER MADE THEREUNDER:

Now the question whether or not Act 27 of 2005 and the rules notified in G.O.Ms. No. 95 and 96 dated 25.07.2005, are ultra vires Articles 16(2) and 371-D of the Constitution of India and the Presidential Order made thereunder.

When the validity of an Act is called in question, courts should firstly examine whether the Act is a law with respect to a topic assigned to the particular Legislature which enacted it. If it is, then the court has next to consider whether, in the case of an Act passed by the State Legislature, its operation extends beyond the territorial boundaries of the State. If the impugned law satisfies both these tests, then finally the court has to ascertain if there is anything in any other part of the Constitution which places any fetters on the legislative powers of such Legislature. The impugned law has to pass all these three tests. (**State of Bombay Vs. R.M.D. Chamarbaugwala**[43]). It is the duty of Constitutional Courts, under our Constitution, to declare a law enacted by the State Legislature as unconstitutional when the State Legislature had assumed to enact a law which is void, either for want of constitutional power to enact it or because the constitutional

forms or conditions have not been observed or where the law infringes the fundamental rights enshrined and guaranteed in Part III of the Constitution. (**Public Services Tribunal Bar Association Vs. State of Uttar Pradesh**[44]; **State of A.P. Vs. McDowell & Co.**[45], **Bakhtawar Trust Vs. M.D. Narayan**[46]).

State legislatures have plenary powers to make laws in relation to State Public Services under Article 245(1) read with Articles 246(3) and Entry 41 List II of the Seventh Schedule to the Constitution and, under Article 309, to regulate recruitment and conditions of service of persons serving under the State. Article 245, which deals with the extent of laws made by Parliament, and by the Legislatures of States, begins with the words *"**subject to the provisions of this Constitution**"*. In other words, the power of the State Legislature to make laws is subject to the provisions of the Constitution. (**Atiabari Tea Co. Ltd Vs. State of Assam**[47]). Similarly the opening words of Article 309, *"**subject to the provisions of this Constitution**"*, limit the amplitude of that power. (**B.S. Yadav Vs. State of Haryana**[48]). Exercise of power by the State Legislature to make laws under Article 309, or of the Governor to make rules under its proviso, are open to challenge on the ground of violation of the provisions of the Constitution. (**Chairman, Railway Board Vs. C.R. Rangadhamaiah**[49]).

The legislative authority conferred by Articles 245 and 246 to make laws subject-wise, or to regulate recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of a State under Article 309, is also qualified

by the declaration made in Article 13(2), that any law, which takes away or abridges the rights conferred by Part III shall be void. (**Behram Khurshid Pesikaka Vs. State of Bombay**[50]).

The A.P. School Education Teachers and other Employees (Abolition of existing service cadres and Regulation of recruitment and conditions of service) Ordinance, 2005, (A.P. Ordinance 12 of 2005) was promulgated and came into force on 13.6.2005. The said Ordinance applied to teachers working in government, mandal parishad and zilla parishad schools and other employees working in the Department of School Education. In exercise of the powers conferred under Sections 5 and 12 of A.P. Ordinance 12 of 2005, and in supersession of the rules issued in G.O.Ms. No. 505 dated 16.11.1998, the A.P. School Education Service Rules were made and notified in G.O.Ms. No. 95 dated 25.07.2005. Rule 2 thereof provides for the Constitution of the Service, Rule 3 the method of appointment and the appointing authority, Rule 4 the rule of reservation, Rule 5 the qualifications for appointment, Rule 8 for probation, Rule 9 training and appointment, Rule 10 for Tests and Rule 11 the unit of appointment. Under Rule 11, for the purpose of recruitment, appointment, seniority, discharge for want of vacancy, promotion and allotment, the unit of appointment is as specified in the table as prescribed therein which reads thus:

Class	Category	Unit of Appointment	
Class I	1,4,5,8,9	Zone I	Srikakulam, Vizianagaram, and Visakhapatnam Districts.
	1 to 4	Zone II	East Godavari, West Godavari and Krishna Districts.

Class II		Zone III	Guntur, Prakasam and Nellore Districts.
		Zone IV	Chittoor, Kadapa, Anantapur and Kurnool Districts.
		Zone V	Adilabad, Karimnagar, Warangal and Khammam Districts.
		Zone VI	Nizamabad, Mahaboobnagar, Medak, Nalgonda and Ranga Reddy Districts
		City of Hyderabad	City of Hyderabad

Similarly, in exercise of the powers conferred by Sections 5 and 12 of A.P. Ordinance 12 of 2005, the A.P. School Education Subordinate Service Rules were made and notified in G.O.Ms. No. 96 dated 25.07.2005. The rules in G.O.Ms. No. 96 are applicable to teachers working in government, mandal parishad, and zilla parishad schools and other employees working in the department of school education. Rule 2(2) provides that the service shall consist of classes and categories of posts specified therein. Rule 3 prescribes the method of appointment. Rule 4 the rule of reservation, Rule 5 qualification, Rule 7 the minimum service, Rule 8 probation and Rule 9 the unit of appointment. Under Rule 9, for the purpose of recruitment, appointment, seniority, discharge for want of vacancy, promotion, transfer and re-appointment, the unit of appointment is as specified in the table given therein, which reads thus:-

Class	Category	Unit of appointment
1	2	3
Class-1	1 to 17,22	Revenue Districts concerned/City of Hyderabad

Class-1	18	Zone - I Srikakulam, Vizianagaram and Visakhapatnam Districts. Zone-II East Godavari, West Godavari and Krishna Districts. Zone-III Guntur, Prakasam and Nellore Districsts. Zone-IV Chittoor, Cuddapah, Ananthapur and Kurnool Districts. Zone V Adilabad, Karimnagar, Warangal and Khammam Districts. Zone VI Nizamabad Mahabubnagar, Medak, Nalgonda and Rangareddy Districts. City of Hyderabad.

Class-II	2	Revenue Districts concerned/City of Hyderabad.
Class-III	1 to 25	Revenue District concerned/City of Hyderabad.
Class-IV	1&2	Revenue District concerned/City of Hyderabad

The A.P. School Education Teachers and other Employees (Abolition of existing service cadres and Regulation of recruitment and conditions of service), Act 2005 (Act 27 of 2005) came into force on 13.6.2005 and consequently Ordinance 12 of 2005 was repealed. The preamble to the Act details the purpose and object for which Act 27 of 2005 was made. Reference is made therein to the earlier rules made under G.O.Ms.No.505 dated 16.11.1998 and G.O.Ms.No.538 dated 20.11.1998, and to the Division Bench judgment of this Court in **M. Kesavulu**[1], (W.P.No.11325 of 2000 and batch dated 18.9.2003),

whereby the rules in G.O.Ms.No.538 dated 20.11.1998 were held to be in violation of the Presidential Order and that the S.L.P, preferred thereagainst, was pending before the Supreme Court. It is also stated that the District Selection committee had selected 16449 candidates for appointment as teachers and that appointments could not be made on account of increase of cadres of teachers working in government schools, mandal parishad and zilla parishad schools, that children upto the age of fourteen years are to be enrolled, retained in schools and provided quality education by 2010 under the Sarva Siksha Abhiyan Programme and, whereas 93% of the teachers are in mandal parishad and zilla parishad schools, only 7% are in government schools and that the constitutional obligation of providing free and compulsory education to all children upto the age of fourteen years can be better achieved by bringing all teachers holding civil posts into one administrative fold for proper monitoring and supervision and that the government intends to remove disparities and bring about uniformity in the service conditions of teachers working in the schools belonging to government, mandal parishads and zilla parishads. It is also stated that the State, by appropriate Act and rules, is entitled to amalgamate or bifurcate departments and constitute different categories of posts and cadres by undertaking further classification, bifurcation or amalgamation as well as to reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time, by abolishing the existing cadres/posts and creating new cadres/posts and that the government considered it necessary to abolish the existing cadres of teachers and other employees in the school education departments and to reconstitute them into new cadres by undertaking legislation.

Sections 3 to 6 thereof, which constitute the basis for the entire

Act, read thus:

3 Abolition of cadres of teachers

(1) Notwithstanding anything contained in any other law for the time being inforce, the existing cadres of teachers working in Government, Mandal Parishad and Zilla Parishad Schools as mentioned in Schedule II are hereby abolished.
(2) Notwithstanding such abolition of cadres under sub-section (1), every Teacher shall continue to hold the post on the same remuneration and upon the same terms and conditions and with the same rights and privileges as to Pension, Gratuity and other matters as he would have held prior to abolition until rules are framed under this Act.

4 Abolition of cadres of other employees

(1) Notwithstanding anything contained in any other law for the time being in force, the existing cadres of other employees in the Department of School Education as mentioned in Schedule I are hereby abolished.
(2) Notwithstanding such abolition of cadres under sub-section (1), every such other employee shall continue to hold to post on the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, Gratuity and other matters as he would have held prior to abolition until rules are framed under this Act.

5 Constitution of School Education Service

(1) Notwithstanding anything contained in any other law for the time being in force and consequent non abolition of the cadres under Sections 3 and 4, restructured School Education Service cadres for teachers working in Government, Mandal Parishad and Zilla Parishad Schools and for other employees working in School Education Department are hereby constituted.
(2) Upon Constitution of such service cadres under sub-section (1) the Government shall have power to make rules to regulate the classification, manner of recruitment, methods of appointment, conditions of service, pay and allowances and discipline and conduct of the teachers arid other employees.

6 Bar of Jurisdiction

No order passed or proceedings taken under the provisions of this Act shall be called in question in any Court, in any suit, or application and no injunction shall be granted by any Court in respect of any action taken or about to be taken in pursuance of any power conferred by or under this Act.

While, under Section 3 (1) and 4(1) of Act 27 of 2005, the existing cadres of teachers in government, mandal parishad and zilla parishad schools and employees in the department of school education were abolished, under Sections 3(2) and 4(2), such teachers and employees in the school education department continued to hold the post, on the same terms and conditions with the

same rights as they had prior to abolition, till rules are framed. Section 5(1) provides for the constitution of restructured school education service cadres for teachers working in government, mandal parishad and zilla parishad schools and for other employees working in the school education department.

We agree with the learned Advocate General, that the power to create, continue and abolish civil post is inherent in every government. It is a policy decision exercised by the executive, or the legislature as the case may be, and is dependant on exigencies of circumstances and administrative necessities. (**N. Ramanatha Pillai Vs. State of Kerala**[51], **K. Rajendran Vs. State of Tamilnadu**[52], **S.S. Dhanoa Vs. Union of India**[53]). Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, fall within the exclusive discretion and jurisdiction of the State subject, of course, to the limitation or restrictions envisaged in the Constitution. The State is entitled to amalgamate departments, bifurcate them and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. It is entirely a matter of policy for the State to decide whether to have several different cadres or one integrated cadre in its services. (**Reserve Bank of India Vs. N. C. Paliwalair**[54]**; S.P. Shivprasad Pipal Vs. Union of India**[55]).

We have also no difficulty in accepting the submission of the learned Advocate General that the State's power to deal with public services, either under entry 41 of list II of the VII Schedule or under Article 309 of the Constitution of India, is not completely taken away

and is only circumscribed by the provisions of Article 371-D of the Constitution and the Presidential Order made thereunder. Similarly the State's power to create or abolish posts, which do not come under the purview of the Presidential Order is, subject to constitutional limitations, unfettered.

But then, even matters of policy, including creation/abolition of posts, have to adhere to and are subject to the provisions of the Constitution. A similar matter of policy fell for consideration in **State of A.P. Vs. V. Sadanandam**[56]. Rule 3 of the A.P. Treasury and Accounts Subordinate Service Rules, which provided that the posts of Head Accountants and Sub-Treasury Officers would be filled up by transfer from amongst U.D.Cs/Asst. Section Officers in the Finance department of the Secretariat, was struck down by the Administrative Tribunal as being violative of the Presidential Order. The Tribunal held that there was no justification for personnel belonging to other zones being transferred on promotion to offices in other zones. In this context, the Supreme Court held that the mode of recruitment and category from which recruitment to a service should be made were policy matters exclusively within the purview and domain of the executive and it would not be appropriate for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which recruitment should be made.

The judgment in **V. Sadanandam**[56] was held not to have been correctly decided, in **V. Jagannadha Rao**[19] wherein the Supreme Court, while holding that both these reasons did not constitute a true interpretation of the provisions of the Presidential Order, observed:-

"……At the outset, it may be noticed that Article 371-D(10) of the Constitution unequivocally indicates that the said article and any order made by the President thereunder shall have effect notwithstanding anything in any other provision of the Constitution or in any other law for the time being in force. Necessarily, therefore, if it

is construed and held that the Presidential Order prohibits consideration of the employees from the feeder category from other units then such a rule made by the Governor under the proviso to Article 309 of the Constitution will have to be struck down. Then again in exercise of powers under para 5(2) of the Presidential Order if the State Government makes any provision, which is outside the purview of the authority of the Government under para 5(2) of the Order itself, then the said provision also has to be struck down. Having construed the Rules framed by the Governor under proviso to Article 309 of the Constitution from the aforesaid standpoint, the conclusion is irresistible that the said Rule to the extent indicated by the Tribunal is constitutionally invalid and its conclusion is unassailable. In the case in hand, the impugned provisions do not appear to have been framed in exercise of powers under para 5(2) of the Presidential Order and as such the same being a Rule made under proviso to Article 309 of the Constitution, the Presidential Order would prevail, as provided under Article 371-D(10) of the Constitution and the earlier judgment of this Court in *Sadanandam:* (AIR 1989 SC 2060) must be held to have not been correctly decided. As a consequence, so would be the case with *Govt. of A.P. Vs. Satyanarayana Rao:* (AIR 2000 SC 1729).....".

As noted above the Presidential Order does not empower the State Government to organize local cadres after 17.01.1978, (on expiry of the 27 month period from the commencement of the Presidential Order), for such a power, thereafter, has been conferred on the President alone. It is only in respect of cadres, which have been organized into local cadres, is the State's power to abolish such cadres circumscribed by the Presidential Order. Since the power to organize local cadres is no longer available to the State Government, any action taken by the State on its own, without the President having required it do so under the proviso to Para 3(1), would be in violation of Article 16(2) of the Constitution of India, as it would amount to prescription of residence in a part of the State as a qualification for appointment in civil services under the State. The State Government cannot, therefore, organize the newly created cadres, without the President requiring it to do so, into local cadres.

It is only to the limited extent that the State is divested of the power to abolish local cadres, without prior approval of the President, must it be held that exercise of the power by the State by legislation, plenary or subordinate, to abolish cadres, which have been organized

into local cadres, is curtailed. The submission of the learned Advocate General that the Presidential Order, neither explicitly nor by necessary implication, necessitates an inference that the State's power to abolish cadres, which have been organized into local cadres, is curtailed does not merit acceptance.

We make it clear that we have not examined the motives of the legislation, despite elaborate submissions on either side. The intention of the Legislature in enacting a particular statute is immaterial in terms of the question relating to its validity. (**Bakhtawar Trust**[46]). Courts cannot infer legislative malice in passing the statute. Interference is restricted in nature and that too on constitutional aspects and not beyond. (**Gurudevdatta VKSSS**[20]). Legislation cannot be impugned on the ground of its being vitiated by malafides. (**State of Himachal Pradesh Vs. Kailash Chand Mahajan**[57]). While courts can declare a statute unconstitutional when it transgresses constitutional limits, they are precluded from inquiring into the propriety of the exercise of legislative power. It has to be assumed that the legislative discretion is properly exercised. The propriety, expediency and necessity of a legislative Act are for the determination of the legislative authority and not by the courts. (**T. Venkata Reddy Vs. State of A.P.**[58]). A statute enacted by a legislature, falling within its competence, which does not offend the fundamental rights guaranteed by Part III and does not contravene any other provisions of the Constitution cannot be declared ultravires either on the ground that its provisions are vague or uncertain or ambiguous or mutually inconsistent. (**Seth Nand Lal Vs. State of Haryana**[59]).

The intention of the State in enacting Act 27 of 2005, the learned Advocate General would vehemently contend, is laudable,

since it seeks to provide avenues of growth for a large number of teachers in mandal parishad and zilla parishad schools. What is being examined is not the legislative intent but the legislative competence of the State legislature to make such a law. We are satisfied that Act 27 of 2005 is beyond the legislative competence of the State Legislature.

While the Presidential Order does not confer on the State Government the power to abolish a local cadre, a conjoint reading of Sections 3, 4 and 5 of Act 27 of 2005, with its preamble, would establish that Act 27 of 2005 is intended only to integrate the erstwhile service of teachers working in government schools, which was hitherto organized into a local cadre, with the cadre of teachers working in mandal parishad and zilla parishad schools, which were not organized into local cadres. The impugned legislation in the guise of abolition of the cadres themselves, in effect, is a circuitous method adopted to abolish local cadres.

While Section 3(1) of Act 27 of 2005, abolishes the existing cadres of teachers in government, mandal parishad and zilla parishad schools, Section 3(2) provides that, notwithstanding such abolition, every teacher shall continue to hold the said post on the same terms and conditions as were applicable prior to its abolition until rules are made under the Act. Section 4 deals with other employees. Under Section 5(1), an integrated restructured cadre of teachers working in government, mandal parishad and zilla parishad schools is constituted. By a process of legislative fiction, the integration, which was faulted in **M. Kesavulu**[1], is now sought to be achieved. The terms and conditions of service, made applicable to this restructured service cadre, are those prescribed in G.O.Ms. No. 95 and 96 dated 25.07.2005.

As reiterated both by the learned Advocate-General and Sri D.

Prakash Reddy, learned Senior Counsel, instead of amalgamating two cadres, one which was organized into a local cadre and the other which was not, Act 27 of 2005 abolishes both these cadres and creates a new unified cadre which consists of both these cadres. The entire endeavour is to achieve integration of two cadres, one which was organized into a local cadre with another which was not, and which was earlier, in **M. Kesavulu**[1], held to be impermissible. What was not permitted in **M. Kesavulu**[1], is sought to be achieved in an indirect manner under the impugned legislation, though it is well settled that what is not permitted to be done directly cannot be done indirectly. Para 3(1) of the Presidential Order and its proviso cannot be allowed to be defeated by this process. (**D.C. Wadhwa Vs. State of Bihar**[60]).

In **Welfare Association Vs. Ranjit P. Gohil**[61], the Supreme Court observed:-

"……**The doctrine of colourable legislation came to be examined by a Constitution Bench of this Court in *K.C. Gajapati Narayan Deo* v. *State of Orissa: AIR 1953 SC 375*. It was held that the doctrine of colourable legislation does not involve any question of *bona fides* or *mala fides* on the part of the legislature. The whole doctrine resolves itself into the question of competency of a particular legislature to enact a particular law. If the legislature is competent to pass a particular law, the motives which impelled it to act are really irrelevant. On the other hand, if the legislature lacks competency, the question of motives does not arise at all. Whether a statute is constitutional or not is thus always a question of power (vide *Cooleys Constitutional Limitations*, Vol. 1, p. 379). The crucial question to be asked is whether there has been a transgression of legislative authority as conferred by the Constitution which is the source of all powers as also the separation of powers. A legislative transgression may be patent, manifest or direct or may also be disguised, covert and indirect. It is to this latter class of cases that the expression colourable legislation has been applied in certain judicial pronouncements. The expression means that although apparently a legislature in passing a statute which purports to act within the limits of its powers, yet in substance and in reality it transgresses those powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise. The discerning test is to find out the substance of the Act and not merely the form or outward appearance. If the subject-matter in substance is something which is beyond the legislative power, the form in which the law is clothed would not save it from**

condemnation. The constitutional prohibitions cannot be allowed to be violated by employing indirect methods. To test the true nature and character of the challenged legislation, the investigation by the court should be directed towards examining (*i*) the effect of the legislation, and (*ii*) its object, purpose or design. While doing so, the court cannot enter into investigating the motives, which induced the legislature to exercise its power……" (emphasis supplied)

The question eventually is whether the State legislature, in passing Act 27 of 2005, while purporting to act within the limits of its powers has, in substance and reality, transgressed these powers. The test is to find out the substance of the Act and not merely the form of its outward appearance. The substance of Act 27 of 2005 is to integrate a local cadre with a cadre which is not localized, and since the State Legislature has no such power Act 27 of 2005 is a piece of colourable legislation. Since Act 27of 2005, in effect, seeks to abolish a local cadre it is ultra vires the Presidential Order and, in view of the overriding effect of the Presidential Order under clause 10 of Article 371-D, Section 3(1) and 4(1) of Act 27 of 2005 are liable to be struck down. Once Sections 3(1) and 4(1), of Act 27 of 2005, are struck down, the local cadre constituted under G.O.Ms. No. 529 dated 14.05.1976 must be deemed to be in existence and consequently Section 5(1) which, in effect, amalgamates a local cadre with a cadre which is not localized, is also ultravires the Presidential Order and contrary to the law laid down in **S. Prakasha Rao**[13] and **M. Kesavulu**[1].

Both the learned Advocate-General and Sri D. Prakash Reddy, learned Senior Counsel, would emphasise that the principle laid down in **S. Prakasha Rao**[13], cannot be applied to every factual situation, and the principle enunciated in the said judgment was in the context of a case of a local cadre which continued to remain in existence and not to a situation, as in the present case, where cadres, which were organized as local cadres, ceased to exist consequent upon its

abolition by Act 27 of 2005. They would submit that the Division Bench Judgment of this Court in **M. Kesavulu**[1] has also no application since it related to amalgamation/merger of a local cadre with a cadre which was not localized.

It is true that in **S. Prakasha Rao**[13], the question which arose for consideration was whether it was open to the State Government to meddle/alter the area for which local cadres have already been organized under Para 3 and in **M. Kesavulu**[1] whether amalgamation of cadres in the school education department, which had already been organized into local cadres, with cadres in Panchayat raj institutions, which were not organised into local cadres, was permissible in view of the law laid down in **S. Prakasha Rao**[13]. While the factual matrix in the present case is not identical to those in **S. Prakasha Rao**[13] and **M. Kesavulu**[1], it is well to remember that the Supreme Court in **S. Prakasha Rao**[13] and **V. Jagannadha Rao**[19] and the Division Bench of this Court in **M. Kesavulu**[1] interpreted the provisions of the Presidential Order. The construction placed by the Supreme Court, on the provisions of the Presidential Order, is binding on the High Courts and must be followed.

Both the learned Advocate General and Sri D. Prakash Reddy, Learned Senior Counsel would contend that the Rules in G.O.Ms. No. 95 & 96 dated 25.07.2005, issued under Ordinance 12 of 2005, maintain the same units of appointment as were available prior to abolition of cadres and, therefore, even during the interregnum, the spirit of Article 371-D read with the Presidential Order is being maintained, that even prior to Act 27 of 2005 coming into force, District was a unit in respect of Secondary Grade teachers and School Assistants and that 80% of the posts in the unit were required to be

reserved in favour of local candidates. They would contend that, similarly even for schools under the control and jurisdiction of local authorities, district has always been the unit and since the position, consequent upon Act 27 of 2005 coming into force, remains the same, neither Article 371-D nor the Presidential Order can be said to have been violated. Reference is made to the Rules in G.O.Ms.No.96 dated 25.7.2005 to contend that the unit of appointment of teachers, in the newly created unified integrated service of teachers in government, mandal parishad and zilla parishad schools continues to remain the district and as such neither the impugned Act, nor the Rules, can be said to have violated the provisions of the Presidential Order. Reference is also made to Clauses (iii) and (iv) of Para 6(1) and Clauses c(1) and c(2) of Para 8(1), wherein a district is regarded as a local area, for all posts in the A.P. Education and Subordinate service and for all other similar/equivalent categories of posts, under any department of the State Government, and for direct recruitment to all posts of teachers under local authorities and that 80% of such posts are required to be filled in by direct recruitment in any local cadre under the State. It is contended that, in so far as local area reservation is concerned, Article 371-D and the Presidential Order have not been violated and the impugned Act and the Rules, in fact, are in furtherance of Article 371-D and the Presidential Order. The question is not whether the impugned legislation or the rules have ensured local area reservation which existed prior to making of the Act and the Rules, but whether the State Legislature or the rule making authority has the power, under the Presidential Order, to abolish local cadres on its own and organize cadres under local authorities into local cadres.

Para 6(1) requires each district to be regarded as a local area for the purpose of direct recruitment. While Clause (iii) thereof relates

to direct recruitment to all posts in the A.P. School Education Subordinate Service and all other similar/ equivalent categories of posts of teachers under any department of the State Government, Clause (iv) relates to direct recruitment to posts of teachers under a local authority. The very fact that Para 6(1), which relates to direct recruitment to posts of teachers, makes a separate provision under Clause (iii) for departments of the State Government and in Clause (iv) for those under local authorities, would, itself, establish that the Presidential Order does not contemplate a unified cadre comprising posts of teachers in schools under the control of departments of the State Government and teachers in schools under the control of local authorities.

Para 8(1) requires 80% of posts, filled in by direct recruitment, to be reserved in favour of local candidates in relation to the local area in respect of such cadre. Clause C(1) thereof relates to posts in any *"**local cadre**"* under the State Government and Clause C(ii) relates to *"**cadres**"* under a local authority. The extent of reservation to be provided for local candidates in posts to be filled by direct recruitment is restricted to teachers in *"**local cadres**"* under the State Government. Thus, posts in the category of teachers in the A.P. School education subordinate service and other posts of teachers under any department of the State Government can be extended the benefit of local area reservation only if they are organized into *"**local cadres**"*. It is necessary to note that under Para 5(1), a local cadre is a unit not only for the purpose of recruitment but also for the purpose of promotion, seniority etc., Rule 11 of the rules notified in G.O.Ms. No. 95 dated 25.7.2005, and Rule 9 of the rules notified in G.O.Ms. No. 96 dated 25.7.2005, prescribe zone/district as a unit for the purposes of recruitment, promotion, seniority etc. It is only when the cadres of

teachers are organized into ***"local cadres"*** would such prescription of residence in the unit, as a qualification for promotion, seniority etc, fall within the ambit of the Presidential Order. Once a local cadre is abolished, any promotions effected, on the basis of residence in a part of the State, in the absence of a specific provision in this regard in the Presidential Order, is not entitled for protection under Clause (10) of Article 371-D and would be in violation of Article 16(2) of the Constitution of India. Rule 11 of the Rules notified in G.O.Ms. No.95 dated 25.7.2005, and Rule 9 of the Rules notified in G.O.Ms.No.96 dated 25.7.2005, to the extent zone/district is prescribed as a unit for the purpose of seniority, promotion etc., are, therefore, ultravires Article 16(2) of the Constitution of India.

While we do not see any embargo on the State's power to create a unified cadre as long as such unification does not fall foul of Article 371-D, the Presidential Order made thereunder or any other provision of the Constitution, including Article 16(2), unification of teachers in government schools and mandal and zilla parishad schools under Section 5(1) of Act 27 of 2005 violates the provisions of the Presidential Order. Since the State Government, without the President requiring it to do so, has no power to organize local cadres, the benefit of local area reservation cannot be extended to such newly created cadres as it would then violate Article 16(2). While the State, in its wisdom, may consider it necessary to distribute cadres/posts in public services equitably between different areas of the State this power, to so provide by organizing local cadres, would be available only after the President, under the proviso to Para 3(1) of the Presidential Order, requires it to organize local cadres.

Learned Advocate General would submit that fetters being placed, on the power of the State Government to abolish cadres would

result in a situation where the government may have to carry the burden of continuing a cadre which is wholly unnecessary and which has become defunct merely on the ground that it has been organized into local cadres. Such a situation does not arise in the present case, since the very cadres which were abolished under Sections 3(1) and 4(1) have, by legal fiction, been continued under Section 3(2) and 4(2) and restructured into a new cadre under Section 5(1) by integration of the two separate cadres which were abolished under Sections 3(1) & 4(1) of Act 27 of 2005. There could, however, be cases in future where the cadre, which has been organized into a local cadre, may have outlived its utility. The State Government is not obligated to continue an existing source of public employment for all times to come, merely because the cadre was organized as a local cadre. It must, however, seek approval of the President and only after the President exercises powers under the proviso to Para 3(1) of the Presidential Order and approves its request, for abolition of the cadres which have been organized into local cadres, can such cadres be abolished. In a country governed by the rule of law, it is the Constitution which is supreme and since the Constitution itself, under clause 10 of Article 371-D, ordains that the provisions of the Presidential Order shall prevail, notwithstanding anything contrary thereto even in the other provisions of the Constitution itself or under any law in force, the power of the State to abolish cadres is subject to the limitations prescribed under the Presidential Order.

It is no doubt true that when the cadre, which has been organized into a local cadre, has itself been abolished, the local cadre would also cease to exist. The question is not whether the State Government has the power to abolish cadres but whether it is empowered, under the Presidential Order, to abolish a cadre which

has been organized into a local cadre. It does not have any such power. We must, however, make it clear that any cadre created by the State Government, which does not fall within the ambit of the Presidential Order, can always be abolished by the State Government. Though administrative exigencies and public interest may necessitate the State to abolish cadres, which have been organized into local cadres, and the State cannot be forced to continue such cadres even if they have become redundant, such cadres can only be abolished after approval of the President and not prior thereto. The construction which we have now placed, on Para 3(1) of the Presidential Order and its proviso, is neither contrary to public interest nor does it fall beyond the scope and object of Article 371-D of the Constitution of India for it is well settled that while interpreting the Presidential Order, the philosophy behind introduction of Article 371-D into the Constitution of India must be borne in mind. (**M. Shyam Sunder Vs. Govt. of A.P.**[62]).

Since the power to make an order includes the power to rescind under Section 21 of the General Clauses Act, the President, who is the repository of the power to require a local cadre to be organized, would alone have the power to require that an existing local cadre be abolished. The State Government could always put forth its case to the President and seek an order requiring it to abolish the local cadre which has become defunct.

We have no difficulty in accepting the submission of the learned Advocate General that the Presidential Order does not deprive the State Government of its powers to create new cadres. The power to abolish cadres which are not organized into local cadres, and to which the Presidential Order does not apply, inheres in the State Government. The restriction is only with regards its power to meddle

with a cadre, which has been organized into a local cadre, either under Para 3(1) of the Presidential Order or pursuant to an order of the President under the proviso thereto. As long as the local cadre is not interfered with, it is always open to the State to create new cadres and to abolish such cadres, subject to constitutional limitations, since, in the absence of power being exercised by the President, under the proviso to Para 3(1), these newly created cadres would not fall within the purview of the Presidential Order.

Accepting the contention of the learned Advocate General that the State Government has the power to abolish the very cadre, which has been organised into a local cadre, would result in drastic consequences. Granting such a power would enable the State Government to abolish a local cadre and thereby do away with the requirement of providing reservation on the basis of residence to different parts of the State. Since the State Government does not have the power, in view of the embargo under Article 16(2), to prescribe residence in a part of the State for appointment to posts in the civil services of the State, dehors the Presidential Order, its action in abolishing a cadre, which was hitherto organized into a local cadre, may well result in a situation where the very purpose of introducing Article 371-D in the Constitution, and making the Presidential Order, is negated. As held in **S.Prakasha Rao**[13], if the interpretation of the Presidential Order, as canvassed by the Learned Advocate General, were to be accepted, it amounts to giving blanket power to the State Government to organize local cadres at its will tending to defeat the object of Article 371-D and the Presidential Order.

While it is true that a newly created cadre cannot be organised into a local cadre by the State Government on its own, adequate safeguards are provided in the Presidential Order itself. Both for

abolition of the cadres, which were hitherto organised into local cadres, and to organize the newly created cadres into local cadres, the President has to make an order and till such an order is made neither can an existing local cadre be abolished nor can a newly created cadre be organized into a local cadre.

Learned Advocate General would submit that content and meaning should be assigned to Para 3 of the Presidential Order in the light of the changing scenario and would place reliance on **D.R. Venkatachalam Vs. Deputy Transport Commissioner**[63] wherein the Supreme Court observed:

"…….Public law responds to societal challenges and constitutional changes. To miss the ideological thrust of the Constitution while construing legislation relating to public law and scanning them for their validity is to fail in understanding the social philosophy that puts life and meaning into the provisions of the Act. Legal Darwinism adapting the rule of law to new societal developments so as to survive and serve the social order is necessary……."

It is only the provisions of Article 371-D and any order made by the President thereunder which, under Clause 10 of Article 371-D, has been given over-riding effect over other provisions of the Constitution and other laws for the time being in force. It is only if action is taken pursuant thereto would it be immune from attack for violation of any of the other provisions of the Constitution. Any statutory provision which is contrary to the provisions of the Presidential Order must, in view of the overriding effect given thereto under Article 371-D(10), be struck down. If, on the other hand, the action taken is not protected either by the provisions of Article 371-D or the Presidential Order made thereunder, the validity of such action, be it legislative or executive, must adhere to the other provisions of the Constitution including Part III thereof. In a Country governed by a written Constitution, it is the Constitution which is Supreme and Sovereign. Exercise of plenary legislative authority, and discharge of legislative functions, by the State

Legislatures is by virtue of the powers conferred on them by the relevant provisions of the Constitution. The basis and the source of power is the Constitution itself. Though the State legislature has plenary powers, they function within the limits prescribed by the material and relevant provisions of the Constitution. (**In re, Under Art. 143, Constitution of India**[64]). If any legislative instrument falls foul of any of the provisions of the Constitution it must, necessarily, be struck down.

The submission of the Learned Advocate General that interpretation of the Presidential Order in a manner which would place fetters on the powers on the State Legislature to abolish cadres, which were organized as local cadre, would result in absurdity must, necessarily, be rejected. The very purpose of conferring powers on the President, under Article 371-D, to provide for equitable opportunities and facilities for the people belonging to different parts of the State of A.P, in the matter of public employment, itself circumscribes the legislative power of the State both under Entry 41 List II of the VII Schedule and Article 309 of the Constitution. The plenary power of legislation is not unfettered but is circumscribed by the provisions of Article 371-D and the Presidential Order made thereunder. If the Presidential Order prohibits the State Government from abolishing the cadre, which has been organized into a local cadre, the fact that it may burden the State would not justify upholding the impugned Act and the Rules, if they are ultravires Article 16(2) or 371-D of the Constitution and the Presidential Order made thereunder. The impugned Act and the Rules cannot, in such circumstances, be upheld assigning it content and meaning in the light of the State's or for that matter the Court's perception of a changing scenario. The plea of absurdity must necessarily fail.

CONCLUSIONS:

We summarize our conclusions as under:

(1) Since Clause (10) of Article 371-D of the Constitution gives over-riding effect to the provisions of Section 371-D, and the Presidential Order made thereunder, over any other provision of the Constitution or any other law for the time being in force, any action taken by the State, in exercise of the powers conferred under the Presidential Order, would be immune from attack for having violated any other provisions of the Constitution or any other law in force.

(2) Since Article 371-D, and the Presidential Order made thereunder, mark a departure from the general scheme of the Constitution, it is only if the action of the State is traceable to any specific provision in the Presidential Order would it be entitled for the protection of Clause (10) of Article 371-D;

(3) Power of the State Government to organize local cadres under Para 3(1) expired on the completion of the 27 month period from the date of commencement of the Presidential Order and, after 17.1.1978, the State Government no longer has the power to organize local cadres.

(4) It is the President, under the proviso to Para 3(1), who alone can require the State Government to organize local cadres;

(5) Unless the President requires the State Government to organize local cadres, any action by the State Government in organizing local cadres on its own, not having been specifically provided for in the Presidential Order, would be subject to Constitution limitations;

(6) Since organizing a local cadre, in effect, amounts to prescribing ‘residence’ in a part of the State as a qualification

for public employment, such action of the State would fall foul of Article 16(2) of the Constitution;

(7) While the General Clauses Act applies to the provisions of the Presidential Order, Section 21 thereof, which provides that the power to make an order would include the power to rescind, is not available to the State Government, since it does not have the power to make an order, requiring local cadres to be organised, after 17.1.1978;

(8) Since the power to make the order, requiring the State Government to organize local cadres, has been specifically conferred on the President under the proviso to Para 3(1) of the Presidential Order, Section 21 of the General Clauses Act would enable the President to make an order rescinding the order whereby local cadres were organised and, in effect, requiring the State Government to abolish local cadres;

(9) It is only when the President requires it to do so is the State Government entitled, under the Presidential Order, to organize newly created cadres into local cadres and abolish cadres which hitherto had been organized into local cadres;

(10) It is only after the President has required the State Government to organize, the newly created cadres, into local cadres would Para 13 of Presidential Order apply and in the interregnum, from the date on which the President, by order, has required the State Government to organize local cadres till the date on which local cadre are actually organized, appointments made and promotions effected would only be provisional;

(11) Since the State Government does not have the power to organize local cadres on its own, in the absence of a specific

provision in the Presidential Order enabling it to do so, any action in this regard would amount to prescription of "residence" in a part of the State as a qualification for employment and would be in violation of Article 16(2). Such State action is neither protected under the Presidential Order nor can any such appointment made, or promotions effected ultravires Article 16(2) be treated as provisional under Para 13 of the Presidential Order;

(12) Local cadres can only be organized in respect of departments of the State Government and not for cadres under any local authority. As such neither Para 3(1) nor its proviso would enable organization of cadres, under any local authority, into local cadres;

(13) While the State has the inherent power to create and abolish cadres in civil services under the State, it does not have the power on its own, without being required by the President to do so, to either organize the newly created cadres into local cadres or to abolish cadres which hitherto were organized into local cadres;

(14) What cannot be done directly cannot be done indirectly. A conjoint reading, of Sections 3, 4 and 5 of Act 27 of 2005 with its preamble, would establish that the very purpose and object of Act 27 of 2005 is to integrate cadres of teachers and other employees in government, mandal parishad and zilla parishad schools. Sections 3(1) and 4(1) of Act 27 of 2005, in effect, abolish local cadres. Through a circuitous process of abolishing cadres which were organized into local cadre and, in effect, abolishing the local cadres themselves, Act 27 of 2005 seeks to make a law which is beyond its legislative

competence. Act 27 of 2005 is, thus, a piece of colourable legislation;

(15) Since the State does not have power to abolish local cadres without the President requiring it to do so, and as the President has not so required till date, Section 3(1) and Section 4(1) of Act 27 of 2005 which abolishes cadres of teachers in government schools and other employees in the school education department of the government, which had been organized into local cadres in G.O.Ms.No.529 dated 14.5.1976, is ultravires the Presidential Order and is liable to be struck down.

(16) Consequent upon Sections 3(1) and 4(1) of Act 27 of 2005 having been struck down the local cadres, organized under G.O.Ms.No.529 dated 14.5.1976, remain in force;

(17) Section 5(1) of Act 27 of 2005 which integrates posts of teachers and other employees in a local cadre with those which do not belong to a local cadre, is also in violation of the Presidential Order and the law laid down by the Supreme Court in **S. Prakasha Rao**[13] and the Division Bench of this Court in **M. Kesavulu**[1].

(18) The rules in G.O.Ms.Nos.95 and 96 dated 25.7.2005 to the extent teachers in government, mandal parishad and zilla parishad schools are treated as a unified cadre and a common unit is prescribed for appointment, seniority, promotion etc., to posts in this cadre, are ultravires the Presidential Order and are liable to be struck down since cadres under a local authority cannot form part of the local cadres of departments of the Government of A.P;

(19) Since Sections 3, 4 and 5 of Act 27 of 2005 constitute

the basis for Act 27 of 2005, and the other provisions of the Act are closely interwoven and not severable therefrom, Act 27 of 2005 is struck down in its entirety. The Rules in G.O.Ms. No. 95 & 96 dated 25.07.2005, do not survive after the parent Act 27 of 2005 has been struck down.

W.P.17548 of 2006 filed by the Government of A.P. and W.P.17628 of 2006 filed by the State Teacher Unions are dismissed and W.P. Nos.18666, 19459, 23362 of 2006 are allowed. W.P. Nos.17051, 17076 and 16771 of 2006 are filed by teachers working in government schools questioning the orders transferring them to zilla parishad schools. Since the petitioners therein, teachers working in government schools, belong to a local cadre which is a separate unit for the purpose of appointment, seniority, promotion, transfer etc., their transfer to the services of a local authority which has not been, and cannot be, organized into a local cadre is illegal. Consequently all these three writ petitions are also allowed.

W.P. No. 21236 of 2006 is filed seeking to declare Rule 5(ii) of G.O.Ms.No.96 dated 27.5.2006 as detrimental to the interests of children studying in Urdu medium schools. The petitioner has approached this Court directly. In view of the law laid down in **L. Chandra Kumar Vs. Union of India**[65], the petitioner is not entitled to invoke the jurisdiction of this Court without having approached the Tribunal in the first instance, even if it be by way of a challenge to a statutory provision. The writ petition is accordingly dismissed, leaving it open to the petitioner to approach the Andhra Pradesh Administrative Tribunal, if they so choose. No costs.

B. PRAKASH RAO,J

Date:28-02-2007

RAMESH RANGANATHAN,J

Note: L.R. copy to be marked
B/o
MRKR/ASP

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[1] (2003)6 ALD 522)
[2] AIR 1970 SC 422
[3] 2003(4) ALT 36
[4] (1979) 2 SCC 34
[5] AIR 1987 SC 663
[6] 1991(6) SLR 56 (SC)
[7] AIR 1989 SC 44
[8] AIR 1989 SC 48
[9] 1990(2) ALT 567
[10] 1997(6) ALT 290 (FB)
[11] AIR 1995 AP 86 (FB)
[12] 1988(2) ALT 227
[13] AIR 1990 SC 997
[14] 2002(1) ALD 4 (FB)
[15] AIR 1981 SC 53
[16] AIR 1984 SC 161
[17] Judgment in W.P.26072 of 2006 and batch dated 28.6.2006
[18] 2004(1) ALT 659
[19] AIR 2002 SC 77
[20] 2001(4) SCC 534
[21] 2003(1) SCC 692
[22] AIR 1990 SC 1747
[23] AIR 1966 SC 1678
[24] (1984 (2) SCC 500
[25] (2001)8 SCC 61

[26] (2003)5 SCC 134
[27] (2005)10 SCC 437
[28] (2003)2 SCC 455
[29] AIR 1958 SC 1018
[30] AIR 1993 SC 825
[31] 1994(3) ALT 179
[32] AIR 1990 SC 981
[33] (2004)11 SCC 625
[34] (1986 (4) SCC 746
[35] AIR 1992 SC 96
[36] (2001)4SCC 139
[37] (2001)3 SCC 735
[38] 1998)3 SCC 234
[39] 2005(8) SCC 325
[40] (2001) 5 SCC 407
[41] (2001)8 SCC 676
[42] (2001) 8 SCC 540
[43] AIR 1957 SC 699
[44] (2003(4) SCC 104
[45] 1996(3) SCC 709
[46] (2003)5 SCC 298
[47] AIR 1961 SC 232
[48] AIR 1981 SC 561
[49] 1997(6) SCC 623
[50] AIR 1955 SC 123
[51] AIR 1973 SC 2641
[52] AIR 1982 SC 1107
[53] AIR 1991 SC 1745
[54] 1976 SC 2345
[55] AIR 1998 SC 1882

[56] AIR 1989 SC 2060

[57] 1992 (2) Supp.SCC 351

[58] AIR 1985 SC 724

[59] 1980 Supp SCC 574

[60] 1987(1) SCC 378

[61] 2003(9) SCC 358

[62] 2001(6) ALD 87 (DB)

[63] AIR 1977 SC 842

[64] AIR 1965 SC 745

[65] AIR 1997 SC 1125